

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

THOMAS J. KLUTHO,)	
)	
Plaintiff,)	
)	Case No. 4:20-cv-01862
v.)	
)	
JK POWERHOUSE LLC, JAMES J.)	
BUTLER, BRAD M. SOWERS, AND)	
JIM BUTLER IMPORTS, LLC)	JURY TRIAL DEMANDED
)	
Defendants.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendants Jim Butler Imports, LLC (“Butler Imports”), James J. Butler (“Butler”), and Brad M. Sowers (“Sowers”) (collectively, “Removing Defendants”) hereby remove this action from the Circuit Court of St. Louis County, Missouri, where the action is now pending, to the United States District Court for the Eastern District of Missouri, and state as follows:

This Court Has Federal Question Jurisdiction Over the Action

1. On or about September 3, 2020, Plaintiff Thomas Klutho (“Plaintiff”) filed a putative Class-Action Petition in the Circuit Court of St. Louis County, Missouri against defendant JK Powerhouse LLC (“JK Powerhouse”). *See* Case No. 20SL-CC04599, Circuit Court of the 21st Judicial District, St. Louis County, Missouri State Court (the “State Court Action”).
2. On November 20, 2020, the State Court granted Plaintiff leave to amend to add three additional defendants: Butler, Sowers, and Butler Imports. The Removing Defendants and JK Powerhouse are collectively referred to herein as the “Defendants.”
3. Plaintiff then filed his First Amended Class-Action Petition (hereinafter “Amended

Petition”) in the State Court Action on November 30, 2020.

4. Plaintiff alleges that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”) contending that Defendants made “artificial voice and prerecorded voice telephone calls” to Plaintiff and other members of the putative class in violation of “the express provisions of the TCPA, including 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. § 64.1200(a)(2) and (f)(8).” *See* Amended Petition, ¶26.

5. Plaintiff, on his own behalf and purportedly on behalf of the putative class, seeks statutory and punitive damages and other relief for the alleged violations of 47 U.S.C. § 227(b)(1)(A)(iii). *See* Amended Petition, ¶23; *see also id.* at 8 (“Demand for Judgment”).

6. In accordance with 28 U.S.C. § 1446(a), Removing Defendants Butler Imports, Butler, and Sowers have attached, as **Exhibit A**, a copy of all process, pleadings, and orders served upon such Removing Defendants.

7. Neither Butler Imports, Butler, nor Sowers has entered an appearance, filed a responsive pleading, or otherwise responded in the State Court Action.

8. Pursuant to Local Rule 2.03, a copy of all process, pleadings, orders and other documents currently on file in the State Court Action at the time of removal, including the docket sheet, is attached as **Exhibit B**.

9. 28 U.S.C. § 1441 provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

10. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the TCPA. Federal question jurisdiction exists when an action presents a

claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. This Court has jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiff’s claims arise under a federal statute, the TCPA.

11. The Supreme Court has held that federal question jurisdiction exists over private actions, like this one, brought under the TCPA. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 742 (2012).

12. In light of the Supreme Court’s unanimous decision in *Mims* specifically finding federal question jurisdiction over claims arising under the TCPA, this action is properly removable to this Court. *See, e.g., St. Louis Heart Ctr., Inc. v. Vein Centers For Excellence, Inc.*, No. 4:12 CV 174 CDP, 2013 WL 6498245, at *10 (E.D. Mo. Dec. 11, 2013) (“In *Mims*, the Supreme Court held that federal courts had federal-question jurisdiction over TCPA claims.”).

13. The Eastern Division of the Eastern District of Missouri is the division and district in which Plaintiff’s state court action is pending.

14. Venue is proper because the St. Louis County Circuit Court, Missouri is within the United States District Court for the Eastern District of Missouri, Eastern Division. *See* 28 U.S.C. §§ 105, 1441(a) and 1446(a).

Removal Is Timely Under 28 U.S.C. § 1446(b)

15. On December 4, 2020, counsel for Butler Imports, Butler, and Sowers agreed to accept e-mail service of Plaintiff’s summons and the Amended Petition on behalf of Butler Imports, Butler, and Sowers, reserving all defenses.

16. On December 4, 2020, counsel for Plaintiff forwarded the link to the summonses from the State Court Action for Defendant Butler Imports and for Defendant Sowers. *See Exhibit C.*

17. This Notice of Removal is timely pursuant to 28 U.S.C § 1446(b) because it is being filed “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999) (holding that the 30-day removal period does not begin to run until a defendant is formally served); *Marano Enters. of Kansas v. Z-Teca Rests., L.P.*, 254 F.3d 753, 756-57 (8th Cir. 2001) (same).

18. Counsel for Butler Imports, Butler, and Sowers agreed to accept service on December 4, 2020. On that date, counsel for Plaintiff forwarded summons for Defendants Butler Imports and Sowers, but not Defendant Butler.¹

19. Because a 30-day time period to remove running from the December 4, 2020 date would fall on Sunday, January, 3, 2021, the period to remove would extend to the following Monday pursuant to Fed. R. Civ. P. 6(a)(1)(C).

20. As a result, the earliest possible deadline to file for removal extends through at least January 4, 2021, and this removal is timely.

LOCAL RULES AND OTHER REQUIREMENTS

21. Pursuant to Local Rules 2.02 and 2.03, the Original Filing Form has been filed.

22. Pursuant to Local Rules 2.02 and 2.03, the Civil Cover Sheet has been filed.

23. Written notice of the filing of this Notice of Removal will be given promptly to Plaintiff and, together with a copy of the Notice of Removal, will be filed with the Clerk of the Circuit Court of St. Louis County, Missouri, as required by 28 U.S.C. § 1446(d).

¹It does not appear that a summons for Defendant Butler has issued in the State Court Action. *See* Exhibit B.

24. As reflected in the Consent to Removal, attached as **Exhibit D**, all other Defendants consent to removal of this action.²

WHEREFORE, Defendants Jim Butler Imports, LLC (“Butler Imports”), James J. Butler (“Butler”), and Brad M. Sowers (“Sowers”) remove this action from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division, and respectfully request that this action proceed in this Court as an action properly removed.

Dated: December 23, 2020

By: /s/Glennon P. Fogarty

Glennon P. Fogarty, #42983
Robert J. Hurtt, Jr., #65981
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Telephone: (314) 480-1500
Facsimile: (314) 480-1505
glennon.fogarty@huschblackwell.com
rob.hurtt@huschblackwell.com

***Attorneys for Defendants Jim Butler Imports,
LLC, James J. Butler, and Brad M. Sowers***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of December, 2020, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court’s electronic filing system upon Counsel of Record, and via electronic mail this 21st day of December, 2020 upon the following:

Robert Schultz, #35329
SCHULTZ & ASSOCIATES
640 Cepi Drive, Suite A
Chesterfield, MO 63005
Telephone: (636) 537-4645
Facsimile: (636) 537-2599
rschultz@sl-lawyers.com

/s/ Glennon P. Fogarty

²By removing this action and/or consenting to removal, Defendants do not waive any defenses, rights, or objections, which are expressly reserved.